

(1) Meet the emission warranty requirements that apply under § 1042.120. This may involve a separate agreement involving reimbursement of warranty-related expenses.

(2) Report all warranty-related information to the certificate holder.

(b) In your application for certification, identify the company whose trademark you will use.

(c) You remain responsible for meeting all the requirements of this chapter, including warranty and defect-reporting provisions.

§ 1042.650 Migratory vessels.

The provisions of this section address concerns for vessel owners related to extended use of vessels with Tier 4 engines outside the United States where ultra low-sulfur diesel fuel is not available.

(a) *Temporary exemption.* A vessel owner may ask us for a temporary exemption from the tampering prohibition in 40 CFR 1068.101(b)(1) for a vessel if it will operate only in areas outside the United States where ULSD is not available. In your request, describe where the vessel will operate, how long it will operate there, why ULSD will be unavailable, and how you will modify the engine, including its emission controls. If we approve your request, you may modify the engine, but only as needed to disable or remove the emission controls needed for meeting the Tier 4 standards. You must return the engine to its original certified configuration before the vessel returns to the United States to avoid violating the tampering prohibition in 40 CFR 1068.101(b)(1). We may set additional conditions to prevent circumvention of the provisions of this part.

(b) *SOLAS exemption.* We may approve a permanent exemption from the prohibitions in 40 CFR 1068.101(a)(1) for an engine that is subject to Tier 4 standards as described in this paragraph (b).

(1) Vessel owners may ask for a permanent exemption from the Tier 4 standards for an engine that will be installed on vessels that will operate for extended periods outside the United States, provided they demonstrate all of the following are true:

(i) Prior to introduction into service, the vessel will comply with applicable

certification requirements for international safety pursuant to the U.S. Coast Guard and the International Convention for the Protection of Life at Sea (SOLAS). The vessel owner must maintain compliance with these requirements for the life of the exempted engine.

(ii) The vessel will be used in areas outside of the United States where ULSD will not be available.

(iii) The mix of vessels with engines certified to Tier 3 or earlier standards in the owner's current fleet and the owner's current business operation of those vessels makes the exemption necessary. Note that because of the large fraction of pre-Tier 4 engines in the fleet prior to 2021, a request for a Tier 4 exemption prior to that year must clearly demonstrate that unusual circumstances apply.

(2) An engine exempted under this paragraph (b) must meet the Tier 3 emission standards described in § 1402.101, subject to the procedural requirements of 40 CFR 1068.265.

(3) If you introduce an engine into U.S. commerce under this section, you must meet the labeling requirements in § 1042.135, but add the following statement instead of the compliance statement in § 1042.135(c)(10):

THIS ENGINE DOES NOT COMPLY WITH CURRENT U.S. EPA EMISSION STANDARDS UNDER 40 CFR 1042.650 AND IS FOR USE SOLELY IN SOLAS VESSELS. INSTALLATION OR USE OF THIS ENGINE IN ANY OTHER APPLICATION MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(4) Operating a vessel containing an engine exempted under this paragraph (b) violates the prohibitions in 40 CFR 1068.101(a)(1) if the vessel is not in full compliance with applicable requirements for international safety specified in paragraph (b)(1)(i) of this section.

(c) *Vessels less than 500 gross tons.* In unusual circumstances for vessels less than 500 gross tons, we may approve a vessel owner's request for a permanent exemption from the prohibitions in 40 CFR 1068.101(a)(1) for an engine that is subject to Tier 4 standards that will operate for extended periods outside the United States without it being in

§ 1042.660

40 CFR Ch. I (7–1–08 Edition)

compliance with applicable certification requirements for international safety. We may set appropriate additional conditions on such exemptions, and may void the exemption if those conditions are not met.

§ 1042.660 Requirements for vessel manufacturers, owners, and operators.

(a) The provisions of 40 CFR part 94, subpart K, apply to manufacturers, owners, and operators of marine vessels that contain Category 3 engines subject to the provisions of 40 CFR part 94, subpart A.

(b) For vessels equipped with emission controls requiring the use of specific fuels, lubricants, or other fluids, owners and operators must comply with the manufacturer/remanufacturer's specifications for such fluids when operating the vessels. Failure to comply with the requirements of this paragraph is a violation of 40 CFR 1068.101(b)(1).

(c) For vessels equipped with SCR systems requiring the use of urea or other reductants, owners and operators must report to us within 30 days any operation of such vessels without the appropriate reductant. Failure to comply with the requirements of this paragraph is a violation of 40 CFR 1068.101(a)(2).

Subpart H—Averaging, Banking, and Trading for Certification

§ 1042.701 General provisions.

(a) You may average, bank, and trade (ABT) emission credits for purposes of certification as described in this subpart to show compliance with the standards of this part. Participation in this program is voluntary.

(b) The definitions of subpart J of this part apply to this subpart. The following definitions also apply:

(1) *Actual emission credits* means emission credits you have generated that we have verified by reviewing your final report.

(2) *Applicable emission standard* means an emission standard that is specified in subpart B of this part. Note that for other subparts, “applicable emission standard” is defined to also include FELs.

(3) *Averaging set* means a set of engines in which emission credits may be exchanged only with other engines in the same averaging set.

(4) *Broker* means any entity that facilitates a trade of emission credits between a buyer and seller.

(5) *Buyer* means the entity that receives emission credits as a result of a trade.

(6) *Reserved emission credits* means emission credits you have generated that we have not yet verified by reviewing your final report.

(7) *Seller* means the entity that provides emission credits during a trade.

(8) *Standard* means the emission standard that applies under subpart B of this part for engines not participating in the ABT program of this subpart.

(9) *Trade* means to exchange emission credits, either as a buyer or seller.

(c) Emission credits may be exchanged only within an averaging set. Except as specified in paragraph (d) of this section, the following criteria define the applicable averaging sets:

(1) Recreational engines.

(2) Commercial Category 1 engines.

(3) Category 2 engines.

(d) Emission credits generated by commercial Category 1 engine families may be used for compliance by Category 2 engine families. Such credits must be discounted by 25 percent.

(e) You may not use emission credits generated under this subpart to offset any emissions that exceed an FEL or standard. This applies for all testing, including certification testing, in-use testing, selective enforcement audits, and other production-line testing. However, if emissions from an engine exceed an FEL or standard (for example, during a selective enforcement audit), you may use emission credits to recertify the engine family with a higher FEL that applies only to future production.

(f) Engine families that use emission credits for one or more pollutants may not generate positive emission credits for another pollutant.

(g) Emission credits may be used in the model year they are generated or in future model years. Emission credits may not be used for past model years.